



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/171,732	10/08/1998	MICHAEL STROBEL	98123	8391

7590 01/02/2004

THOMAS A VIGIL
WELSH AND KATZ, LTD.
120 SOUTH RIVERSIDE PLAZA
22ND FLOOR
CHICAGO, IL 60606

EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
----------	--------------

3764

DATE MAILED: 01/02/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/17/732

Applicant(s)

Michael Strobel et al

Examiner

Michael Brown

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-5 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-5 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 3764

DETAILED ACTION

Claim Rejections - 35 U.S.C. § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Varn.

Varn discloses in figures 1-8 an orthopedic splint comprising a covering section (60, 64), stabilizer sticks (18, 20), tie strips (78, 86, 88), a padding 92, for the calf and hook and loop means 93 that fasten the padding around the thigh. Thus, fastening the padding on the inside of the covering. The padding protrudes beyond the covering (fig.4, shows 92 protruding beyond the covering).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Neal.

Neal discloses in figures 1-3 an orthopedic splint comprising a padding 10 that has a bifurcated end 30.

Art Unit: 3764

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Meier.

Meier discloses in figures 1-3 a padding 20 comprising a bifurcated end (the open end of the device at reference number 28).

Claim Rejections - 35 U.S.C. § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grim '543 in view of Moore, along with Grim '979.

Grim '543 discloses in figure 8 a covering 48, stabilizing sticks (34, 36), tie strips (40, 56), a pad 74 for a calf and a brace 76 reinforcing the pad. However, Grim '543 is silent about what material the pad is made of. Moore teaches in figure 1 an orthopedic brace having a pad that is made of foam. The foam is braced by a stabilizing stick 36 that is made of metal. Grim '979 teaches in figure 8-9 an orthopedic splint comprising stabilizing sticks 424 that are made of

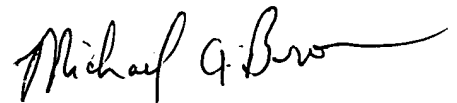
Art Unit: 3764

plastic. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the calf pad as disclosed by Grim '543 could be fabricated of foam as taught by Moore. The foam is a durable, supportive material that will provide support to the calf without causing chafing of the skin on the calf. The brace disclosed by Grim '543 could be made of plastic as taught by Grim '979 because it is durable and inexpensive material to use to support the calf pad.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
November 5, 2003

A handwritten signature in black ink that reads "Michael A. Brown". The signature is written in a cursive style with a long, sweeping horizontal line at the end.

MICHAEL A. BROWN
PRIMARY EXAMINER